

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THE STATE OF ILLINOIS ex rel., KWAME
RAOUL, ATTORNEY GENERAL,

Plaintiff,

v.

ELI LILLY AND COMPANY, *et al.*,

Defendants.

Civil Action No. 1:23cv170

**ORAL ARGUMENT
REQUESTED**

PBM DEFENDANTS' MOTION TO DISMISS

In accordance with Federal Rule of Civil Procedure 12(b)(6), Defendants Evernorth Health, Inc., Express Scripts, Inc., Express Scripts Administrators, LLC, ESI Mail Pharmacy Service, Inc., Express Scripts Pharmacy, Inc., and Medco Health Solutions, Inc. (together, “Express Scripts”); CVS Health Corporation, CVS Pharmacy, Inc., Caremark Rx, L.L.C., Caremark PCS Health, L.L.C., and Caremark, L.L.C. (together, “CVS Caremark”); and UnitedHealth Group Incorporated, OptumRx, Inc., and OptumInsight, Inc., collectively “PBM Defendants,”¹ by and through their respective undersigned counsel, move to dismiss Plaintiff’s Complaint on the grounds that Plaintiff fails to state a claim upon which relief can be granted. In support of this motion, Defendants state as follows:

1. The State’s Complaint fails to state a claim for multiple reasons and therefore should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

¹ Consistent with the Complaint, the brief refers to those entities as the “PBM Defendants,” even though certain of those entities are not PBMs.

2. First, the State's Consumer Fraud Act claim fails because (i) the State does not allege facts with Rule 9(b) particularity showing that any PBM Defendant made material false statements; (ii) the State's attempt to state a claim under the Consumer Fraud Act by alleging violations of the Illinois Uniform Deceptive Trade Practices Act fails; and (iii) the State fails to adequately allege any Consumer Fraud Act claim on its own behalf.

3. Second, the State's unjust-enrichment claim—both on its own behalf and on behalf of private consumers—fails because (i) the State does not plausibly allege the absence of binding legal contracts or any underlying wrong; (ii) the State's *parens patriae* capacity does not extend to unjust-enrichment claims; (iii) the State's allegations fail to satisfy Rule 9(b)'s particularity requirement; and (iv) the unjust-enrichment claim brought on its own behalf is time-barred.

4. Finally, the State's claims against the PBMs' corporate parents and uninvolved affiliates must be dismissed for failure to allege any facts implicating those entities in the challenged conduct.

WHEREFORE, for the reasons provided in the accompanying brief, the PBM Defendants respectfully request that this Court dismiss Plaintiff's Complaint with prejudice.

**CVS HEALTH CORPORATION; CVS
PHARMACY, INC.; CAREMARK RX,
L.L.C.; CAREMARKPCS HEALTH,
L.L.C.; CAREMARK, L.L.C.**

/s/ R. Kennon Poteat III

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**UNITEDHEALTH GROUP
INCORPORATED, OPTUMRX, INC.,
AND OPTUMINSIGHT, INC.**

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**EVERNORTH HEALTH, INC.,
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SCRIPTS ADMINISTRATORS, LLC,
ESI MAIL PHARMACY SERVICE,
INC., EXPRESS SCRIPTS
PHARMACY, INC., AND MEDCO
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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Patricia Brown Holmes
Patricia Brown Holmes